

OGC Has Reviewed

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Chief, Services Branch.

7 October 1948.

Office of the General Counsel.

Parking Space for OO/C [REDACTED]

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1. This will acknowledge your memorandum dated 23 September 1948 in regard to renting parking space in [REDACTED] for the Contact Branch of S.I.A. P.B.A. Enclosure 65969 forwarded by your memorandum quoted pertinent provisions of the Rules and Regulations governing leases in the [REDACTED], where the space is desired. The sections singled out for particular comment provide that:

"2. The management will endeavor to protect the property of patrons, but will not be responsible for loss or damage to cars or their contents from any cause whatsoever. A check room is provided without charge. Lessee's cars are not covered by our insurance.

"4. All cars driven, called for, or delivered at the owner's request are handled at owner's risk, and any person so driving shall be the exclusive servant of the owner and it is understood that for insurance protection they must be covered by owner's insurance policies and cars are operated under owner's responsibility and at owner's own risk.

"5. The owner hereby agrees to indemnify and save the management harmless from any and all liability for injury or death of persons and damage to property arising by the operation of the car within the confines of the garage by the owner of such car or his agent."

2. These sections have been carefully reviewed by this Office, and it is our opinion that they are illegal and void as against the Government. In a similar situation in which the Government agreed to indemnify the Southern Pacific Company in an equally broad and indefinite scope, the Comptroller General (16 C.G. 803) stated that such an agreement came within the prohibition of §. 3732, Revised Statutes, which provides:

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"No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year.
R.S. § 3732; June 12, 1906, c. 3078, 34 Stat. 255."

The Comptroller General goes on to say that the Government cannot contractually assume a liability for the negligence of its own officers, employees, or agents. In another case in which the Government agreed to sweeping indemnities to the contractor, the Comptroller indicated that the portion regarding such indemnity was null and void and that the contracting officer had exceeded his authority in entering into such an agreement, (7 Comp. Gen. 507). - *Contract*

3. It therefore appears that sections 2, 4, and 5 of the garage's lease regulations are inapplicable to the Government. Any torts of Governmental employees can, of course, be settled as appropriate by the head of the Agency under the authority and within the limits of the Federal Tort Claims Act.

4. We were also asked to give an opinion on the propriety of insuring the invitees and their property. For the purposes of liability insurance, an insurable interest would depend on the potentiality of a claim for damages. Since there is no actual agency relationship between the garage and the Government, and the Government cannot be bound by any indemnification provisions of a contract, a potential liability for the negligence of garage employees does not appear to exist. Unless the invitee enters into a personal agreement with the garage, there is no assumption of liability on his part, and he can take legal action against the garage for any injury suffered through the negligence of the garage's employees. An invitee would, of course, be personally liable for his own torts.

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